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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO STANDING COMMITTEE ON PUBLIC ACCOUNTS
REPORT 18 INQUIRY INTO THE MODERN SLAVERY LEGISLATION AMENDMENT
BILL 2023**

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Background

It is estimated that 45.8 million people globally are subject to some form of modern slavery.

Men, women, and children around the world can be subject to modern slavery. Their labour – extracted through deception, force, coercion, violence, or threats – forms part of the supply chains that make many of the products we consume every day, including our food, clothes, cosmetics, cars and electronics. In Australia, industries such as information technology (hardware), agriculture, construction, domestic work, cleaning, hospitality and foods services are at high risk of modern slavery.

The ACT Government recognises the critical role we can play to identify and address the risks of modern slavery, including in supply chains for goods and services that we procure.

Abating modern slavery is a commitment under the Parliamentary and Governing Agreement. Appendix 2 of the Parliamentary and Governing Agreement – 10th Legislative Assembly Australian Capital Territory (PAGA) lists modern slavery legislative reform as a “priority reform area” to “[e]nsure ACT legislation can identify and effectively respond to modern day slavery”.

On 28 March 2023, Jo Clay MLA presented to the Legislative Assembly the Modern Slavery Amendment Bill 2023 (the Bill). The Bill was referred to the Standing Committee on Public Accounts (Standing Committee) in April 2023, with the Standing Committee completing its Report in June 2023.

The Bill recommended three main areas of regulation:

1. A requirement for Territory entities to submit annual voluntary Commonwealth Modern Slavery Statements under the Commonwealth *Modern Slavery Act 2018*.
2. Territory entities to consider risks of modern slavery in their procurements for any procurement over \$25,000.
3. Establish an Anti-Slavery Commissioner.

The Report released by the Standing Committee on Public Accounts has made four recommendations, the Government’s response to each of these recommendations is below.

Government Position on Recommendations

Recommendation 1

The Committee recommends that the ACT Government consider the evidence provided to the Committee’s inquiry as part of its review of the ACT procurement framework to ensure that the prevention of modern slavery is a factor in ACT Government procurement decisions.

Agreed

To address this recommendation, the ACT Government will implement a multifaceted approach through evaluation of suppliers (including their visibility of their supply chains), risk mitigation and training and capability uplift, to ensure that prevention of modern slavery is at the forefront of ACT Government procurement decisions and addressed throughout the procurement lifecycle.

This approach will include undertaking the following actions:

1. Strengthening the Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2023 (No 1);

2. Expanding broader modern slavery considerations in the existing Government Procurement Framework, including support for improved whole-of-government capability uplift; and
3. Making reports under the *Modern Slavery Act 2018 (Cth)*.

There are several industries that are identified as being high-risk for modern slavery. These include cleaning; hospitality; agriculture; security; ICT hardware; construction; textiles and garments, and manufacturing. The ACT Government has considered these industries in the development of the approach outlined below.

Strengthening the Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2023 (No 1)

The *Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2023 (No 1)* (ETWE) currently applies to a procurement undertaken by a Territory entity:

- a) to which the Secure Local Jobs Code (SLJC) applies; and
- b) that has a total estimated value of \$200,000 or more.

This also includes a procurement to establish, or add to an existing, standing offer arrangement.

“Territory funded work” such as construction, building or other industrial cleaning, security services and traffic control services are already considered in the ETWE assessment (as they are subject to the SLJC). The scope of ETWE will be expanded to apply to industries that have a “high risk of modern slavery”, as referenced in the Australian Border Force “Modern Slavery Key Facts and Figures” and the Australian Red Cross “Addressing Modern Slavery: A Guide for Australian Businesses”. The additional categories, for example, ICT hardware, hospitality, agriculture and textiles and garments, are not necessarily the same categories captured by SLJC.

The ETWE process as it applies to SLJC-covered procurement, assesses a supplier’s compliance with the requirements of the SLJC and then considers any potential reputational risks to the ACT Government due to acts or omissions. These risks are considered in the context of risks to the reputation of the ACT Government, or risks to the ACT Government procuring from an unethical tenderer or risks to the confidence in the ACT Government Procurement Framework.

The industries proposed to be in the expanded scope of ETWE will be specifically subject to the reputational risk assessment, which includes consideration of breaches of relevant legislation, convictions, or penalties in addition to current investigations. Following the conclusion of the ETWE assessment, a report is produced for the responsible delegate for the procurement, with a recommendation on whether each supplier should be considered further in the procurement process.

To assess reputational risk of a supplier, desktop research is conducted. A range of sources are used to conduct desktop research including prescribed legislation, court rulings, administrative tribunal decisions, relevant trade unions and other State and Territory government schemes.

A Fair and Safe Employment Evaluation (FSEE) must be submitted by suppliers for ETWE applicable procurements. The FSEE has been expanded to incorporate questions pertaining to modern slavery risk.

Expanding the scope of ETWE to include the identified high risk modern slavery industries ensures that the ACT Government is only awarding contracts to businesses in these industries whose standards align with the Territory. It also gives due consideration to risks of modern slavery in ACT Government supply chains. Based on data obtained from the ACT Government Notifiable Contracts

Register, annually, an average of 23 additional procurements will be captured by the expansion to the ETWE process. This is a 40% increase in the procurements that will be considered and will ensure that the ACT Government only procures with suppliers that meet the highest of ethical standards.

The expanded ETWE Direction will commence on 1 July 2024.

Broader Modern Slavery Considerations in the ACT Government Procurement Framework

The ACT Government Procurement Framework will be strengthened to include the “Guide to Addressing Modern Slavery in Public Sector Procurement” (Guide), as a Ministerial Direction established under Part 6 Section 13 of the Regulation, which allow the Minister to give directions about the management of the procurement activities of Territory entities.

The Guide aims to increase transparency, provide important support and guidance as well as paving the way for continued improvements in addressing these risks. In addition to supporting ACT Government buyers to understand and identify risks in their supply chains, the Guide provides practical tools to mitigate risks of modern slavery during all phases of the procurement lifecycle. Some of these tools include a risk assessment, model weighted and non-weighted criteria, a supplier questionnaire and contract terms and conditions.

The ACT Government is also working with the NSW Anti-Slavery Commissioner on the development of his guidance on reasonable steps to manage modern slavery risks in operations and supply chains. The related ACT Government guidance will be updated as required in accordance with any new best practice guidance and advice.

The Guide will be released in November 2023, with compliance with the Guide being strengthened through the proposed Ministerial Direction expected to commence on 1 July 2024.

Reporting under the Commonwealth’s Modern Slavery Act 2018

In addition to the measures outlined above, the ACT Government Procurement Framework will include an annual voluntary Modern Slavery Statement to the Commonwealth under the *Modern Slavery Act 2018*. The statement, which will be provided at a whole of Government level, requires description of modern slavery risks in operation and supply chain as well as actions taken to address any risks. The first annual voluntary Modern Slavery Statement to the Commonwealth will cover the 2024-25 financial year.

Capability uplift

Consultation across the ACT Public Service has highlighted the need for modern slavery specific education and training to ensure that procurement officers have a level of awareness to identify procurements that could have modern slavery risks. In addition to the Guide which provides access to eLearning Modules on Modern Slavery administered by the Commonwealth, the Government is developing new training as part of the Procurement Training Pathways being delivered under the Procurement Reform Program.

The eLearning Modules on Modern Slavery administered by the Commonwealth are currently available online and will be communicated to coincide with the release of the Guide.

New training as part of the Procurement Training Pathways will be released progressively in the financial year 2023-24.

Recommendation 2

The Committee recommends that the ACT Government establish a collaborative oversight body formed with agencies such as WorkSafe ACT, ACT Policing, Child and Youth Protective Services, Legal Aid ACT and the ACT Government Procurement Board for prevention of modern slavery in the ACT.

Agreed in principle

The Standing Committee's recommendations highlighted the need for the ACT Government to work closely with NSW to address Modern Slavery. To support this, the ACT Government will collaborate through several existing forums and working groups to support information sharing, new policy development and continued collaboration of cross-jurisdictional issues. These opportunities include:

- a. the Intergovernmental Network on Modern Slavery in Public Procurement convened by the Commonwealth for which the ACT Government is currently a member;
- a. NSW Anti-Slavery Commissioner's Procurement Working Party, for which the ACT Government is currently a member; and
- b. New collaborative Anti-Slavery Forum supported by the NSW Modern Slavery Commissioner. The Commissioner's Anti-Slavery Forum is held twice yearly with the first forum anticipated to be held in November or December 2023. The forum is held over 2 days, with one day focussed on procurement and the other day covering a range of other modern slavery issues. The forum will support active engagement, information, sharing and learning, and development of new partnerships and practice arrangements.

Depending on the agenda for each of the forums, it is proposed that, as appropriate, representatives from WorkSafe ACT, ACT Policing, Child and Youth Protective Services, Legal Aid ACT, Procurement ACT and the Government Procurement Board will be asked to attend. Procurement ACT will be the interface between ACT Government and NSW Government to coordinate and streamline correspondence, agenda nominations and attendance.

Whilst the Standing Committee recommends a collaborative oversight body in the ACT, active participation in a range of modern slavery related forums will allow the ACT to address issues relating to our City and Region whilst remaining aligned to Commonwealth and Jurisdictional approaches in addition to collaborating closely with NSW on specific cross-border issues.

The NSW Anti-Slavery Commissioner appeared before the Standing Committee on Public Accounts Inquiry into the Modern Slavery Legislation Amendment Bill 2023 and provided a detailed submission to the Inquiry reinforcing this position. The NSW Anti-Slavery Commissioner asserted *"I believe there are particular opportunities for collaboration between our jurisdictions to address modern slavery risks in public procurement, since public entities in the two jurisdictions frequently use the same suppliers, and even where they do not, suppliers are likely to be purchasing from the same supply chains... Given the overlap in the supplier base used by NSW and ACT public buyers, there are obvious benefits to ensuring consistency between expectations imposed by buyers on suppliers in the two jurisdictions."*¹

¹ Dr. James Cockayne, NSW Anti-Slavery Commissioner, Submission to the Standing Committee on Public Accounts Inquiry, 22 May 2023.

This statement highlights the advantages associated with increased consistency between the NSW and the ACT approaches to Modern Slavery, which indicates that a collaborative approach to addressing modern slavery concerns would be beneficial. Noting issues identified in the Territory are likely to also be those identified in NSW, there is the risk that an ACT Modern Slavery Committee would duplicate work being undertaken by the NSW Committee and could be considered an impractical use of resources.

As the proposed approach will embed Modern Slavery assessments into the procurement framework, the issues beyond the procurement space are being dealt with under the remit of the Human Rights Commission, noting the enhanced complaints pathway under the Human Rights (Complaints) Amendment Bill 2023. The Human Rights (Complaints) Legislation Amendment Bill 2023 proposes to establish a complaints pathway where members of the community can make complaints to the Human Rights Commission about alleged breaches of human rights obligations by public authorities. This will include complaints regarding breaches of the freedom from forced work, which is protected under the Human Rights Act 2004. This would ensure that issues regarding the ACT Government's management of Modern Slavery can still be raised by members of the community and appropriately addressed under the auspices of the Human Rights Commissioner.

Recommendation 3

The Committee recommends that the ACT Government put in place a process to implement measures to prevent modern slavery in the ACT that are:

- *Informed by the recommendations provided by the NSW Anti-Slavery Commissioner for modern slavery as outlined in his evidence*
- *Informed by the Commonwealth Government's approach as outlined in its response to the Statutory Review of the Modern Slavery Act Report (issued 25 May 2023) when this becomes available with a view to seeking harmonisation where appropriate; and*
- *Supported by adequate funding.*

Agreed

The evidence of the NSW Anti-Slavery Commissioner and the McMillian Review of the *Modern Slavery Act 2018* Report have been considered in the development of the proposed approach to tackling modern slavery in the ACT.

The NSW Anti-Slavery Commissioner in his evidence outlined that modern slavery due diligence in procurement may be better tied to level of risk rather than dollar value. The Government has taken this on board when establishing processes, with procurements that are in identified high risk modern slavery industries subject to treatment regardless of their value, versus treating all procurements of a certain value regardless of their modern slavery risk profile. The Government will also ensure that when NSW's new modern slavery guidance material is released, it is reviewed and incorporated into the Guidance and associated tools.

Notably, recommendation 11 of the McMillian Review of the Modern Slavery Act 2018 is to have a due diligence system that meets the requirements mentioned in rules made under s 25 of the *Modern Slavery Act 2018*. Section 25 states that the Minister, by legislative instruments, may make

https://www.parliament.act.gov.au/__data/assets/pdf_file/0020/2227610/Submission-09-NSW-Anti-Slavery-Commissioner.pdf

rules prescribing matters that entities are required to follow. The recommendation indicates the development of rules requiring certain due diligence systems to be used to detect modern slavery risks which would provide greater clarity to reporting entities as to how they should be assessing modern slavery risks.

The ACT Government has taken this into consideration through the proposed setting of a Ministerial Direction in relation to the Guide. The Guide has been developed to allow ACT Government buyers to identify, understand and mitigate modern slavery risks.

Recommendation 4

The Committee recommends the Assembly does not pass the Modern Slavery Legislation Amendment Bill 2023 in its current form.

Noted

While the passage of the Bill is a matter for the Assembly, the Government considers that the steps outlined in this response provides a comprehensive approach to addressing modern slavery in the ACT. The Government agrees with the Committee that strengthening the existing Government Procurement Framework and other steps being taken in the Procurement Reform Program can and will achieve the core intent of the Bill.